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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/630,340	07/31/2000	Victor Pan	LIFE-009	5593

24353 7590 04/20/2004

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EXAMINER

CROSS, LATOYA I

ART UNIT PAPER NUMBER

1743

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/630,340

Applicant(s)

PAN ET AL.

Examiner

LaToya I. Cross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Withdrawal of Rejections from Previous Office Action

- The anticipatory rejection of claims 11, 12, 14, 19, 20 and 22 over Shartle '660 is withdrawn in view of Applicants' arguments that Shartle fails to teach collecting reflectance data before the test strip has entered an optical meter and after the test strip has entered the meter. Likewise, the obviousness rejection of claims 13, 15-19 and 21 over Shartle in view of Saunders is withdrawn.
- The rejection of claims 19-22 under 112, 2nd paragraph is withdrawn in view of Applicants' cancellation of the claims.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shartle '660.

Shartle '660 discloses an automated meter useful in testing for the presence of a sufficient amount of sample on a test strip. The meter comprises a means for obtaining reflectance data via a LED illumination source 42a (visible light source) and a detector 42b. The light source illuminates the sample port 12. The detector measures reflected light. A signal is provided denoting the presence of the sample. This signal causes an actuator 48 to release bladder member 14 and move sample further down the test strip. See col. 6, line 54 – col. 7, line 33. In figure 4, the automatic meter is shown as it acts on a test strip 10.

Shartle fails to explicitly teach that the reflected light is detected prior to the test strip entering into the meter. However, Shartle teaches that when sample is introduced at the sample application area, a reduction in the reflected light to the detector occurs, thereby triggering the release of the bladder. Thus, the detector, which collects the reflected light data, detects reflected light prior to sample being present at the sample application zone and when sample is present. The detector would not sense a reduction in reflected light if the detector did not detect reflected light prior to sample being present. Further, it would have been obvious to one of ordinary skill in the art that the reflected light is also detected prior to the test strip being inserted into the meter. At col. 6, lines 54-62, Shartle discloses that the user turns the meter on, thereby energizing the strip detector and sample detector. The reference further states that the strip is inserted and the presence of the strip blocks the illumination by LED 40a of detector 40b. Thus, it would have been obvious that the reflected light changes once the strip is inserted into the meter and a change in the reflected light would denote that the data is being collected prior to the strip being inserted and after the strip is inserted.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Shartle '660.

3. Claims 13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shartle '660 in view of US Patent 5,674,699 to Saunders et al.

Shartle '660 is described in detail above. Further, the reference fails to teach the claimed wavelength to use in irradiating the test strip.

Saunders et al '699 teaches that chemicals/compounds specifically absorb light at certain wavelengths. Saunders et al '699 further teaches that the absorbances of many

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chemicals/compounds are known and that one of ordinary skill in the art can readily determine the wavelength at which a particular assay should be conducted to obtain maximum results. See col. 13, lines 1-29. Thus, it would have been obvious to one of ordinary skill in the art to use a wavelength suitable for reflecting light from the particular sample being deposited on the test strip in conducting the method of Shartle '660.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103, in view of the teachings of Shartle '660.

Response to Arguments

4. Applicant's arguments with respect to claims 11-18 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256.


The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jill Warden
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